

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

MICHAEL PIZIAK,

Plaintiff,

v.

CIVIL ACTION NO. 5:12-cv-05728

KRISTEN KELLER, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the various pleadings in this matter including: the Plaintiff's *Application to Proceed Without Prepayment of Fees* (Document 1); the Plaintiff's Motion for Immediate Injunctive Relief/Complaint (Document 2); the Plaintiff's Motion to Prevent Incarceration (Document 5); the *Defendants Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Strike Plaintiff's Motion to Stop Incarceration* (Document 8); the *Defendants Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Dismiss the Plaintiff's Complaint* (Document 14); and the *Defendants Little General Stores, Cory Beasley and Greg Darby's Joint Motion to Dismiss the Plaintiff's Complaint* (Document 17).

By *Standing Order* (Document 3) entered on September 21, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this

Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On April 24, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 23) wherein it is recommended that this Court: deny the Plaintiff's *Application to Proceed Without Prepayment of Fees* (Document 1); deny the Plaintiff's *Motion for Immediate Injunctive Relief* (Document 2, pp. 1 - 2); deny the Plaintiff's Motion to Prevent Incarceration (Document 5); grant the *Defendants Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Dismiss the Plaintiff's Complaint* (Document 14); dismiss the Plaintiff's Complaint (Document 2, pp. 2 - 11); deny as moot the *Defendants Little General Stores, Cory Beasley and Greg Darby's Joint Motion to Dismiss the Plaintiff's Complaint* (Document 17); deny as moot the *Defendants Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Strike Plaintiff's Motion to Stop Incarceration* (Document 8); and remove this matter from the Court's docket.


Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by May 13, 2013. No party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows:

- 1) The Plaintiff's *Application to Proceed Without Prepayment of Fees* (Document 1) is **DENIED**;
- 2) The Plaintiff's *Motion for Immediate Injunctive Relief* (Document 2, pp. 1 - 2) is **DENIED**;
- 3) The Plaintiff's Motion to Prevent Incarceration (Document 5) is **DENIED**;
- 4) The Defendants *Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Dismiss the Plaintiff's Complaint* (Document 14) is **GRANTED**;
- 5) The Plaintiff's Complaint (Document 2, pp. 2 - 11) is **DISMISSED**;
- 6) The Defendants *Little General Stores, Cory Beasley and Greg Darby's Joint Motion to Dismiss the Plaintiff's Complaint* (Document 17) is **DENIED AS MOOT**;
- 7) The Defendants *Kristen L. Keller, Tom Truman, Tom MacAuley, Andrew Dimlich, William Richmond, Pat Lamp, Ed Bibb, and John Gallaher's Motion to Strike Plaintiff's Motion to Stop Incarceration* (Document 8) is **DENIED AS MOOT**; and
- 8) This matter is **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: May 15, 2013

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA